

Q & A

SEPA and Greenhouse Gas Emissions

As Ecology has worked to address issues regarding how to incorporate greenhouse gas emissions into a SEPA analysis, several questions have been raised. Some are more general about SEPA while others are more specific to the guidance Ecology is preparing. This document captures and answers those questions.

What is the State Environmental Policy Act?

The State Environmental Policy Act (SEPA) is a state law that directs local and state agencies to identify and evaluate the environmental impacts of their actions before making a decision whether or not to go forward with or approve the action. SEPA is premised on the notion that “each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.” Consistent with this guiding principle, SEPA is intended to result in informed decision making and better environmental outcomes.

What types of actions does SEPA cover?

A SEPA review is triggered when a proposal requires a governmental agency to make a decision that may significantly affect the quality of the environment. It applies to “project” actions such as approving permits or constructing public facilities, and to “non-project” actions such as the development or amendment of regulations, policies or plans. A SEPA review is required only for new or modified proposals. It does not apply to existing permits, facilities, plans or regulations unless there is some new agency decision involved.

Some types of proposals are “categorically exempt” because they are specifically exempted from the SEPA review process in statute or regulation. If the proposal is “categorically exempt” from SEPA review, it does not need to be evaluated through the SEPA process.

Why is Ecology preparing guidance?

The guidance is intended to assist agencies and project proponents in performing an analysis of greenhouse gases and their impacts on the environment as a result of climate change.

SEPA is broadly worded to require consideration of environmental impacts, and directs agencies to act “to the fullest extent possible” when assessing the environmental impact of a proposal. The legislature has recognized that greenhouse gases have an adverse impact on the environment and that Washington state must do its part to reduce accumulations of greenhouse gases in the atmosphere. Consideration of greenhouse gases under SEPA is appropriate because they have an environmental impact. This is true even though SEPA doesn’t specifically mention “greenhouse gases” or “climate change.”

In fact, SEPA doesn't mention any specific environmental impacts, such as stormwater pollution or conventional air pollutants. However, it has long been accepted that SEPA analyses need to include consideration of these types of impacts. Impacts from greenhouse gas emissions are no different.

Can Ecology provide this kind of guidance without specific legislative authority or through rulemaking?

Yes. Ecology has authority to both adopt formal rules to implement SEPA and to provide guidance to the public and lead agencies to assist them in complying with SEPA and Ecology's rules. Guidance, as opposed to rules, is not binding and does not create new legal requirements.

Does an agency have to use Ecology's guidance?

No. An agency considering greenhouse gases under SEPA may develop its own process or may do the analysis on a case-by-case basis. However, an agency that does not consider climate at all as part of its SEPA review runs a significant risk of having its decision challenged.

Will an analysis of greenhouse gas emissions have to be done for every SEPA review?

No, and for those that do, a qualitative (narrative) analysis may be sufficient. There are many questions in the existing checklist that can be used to describe greenhouse gas emissions such as those relating to air, energy use and transportation. There are also questions that can be used to address a proposal's potential vulnerability to a changing climate such as those relating to floodplains and land and shoreline use.

If agencies can develop their own guidance, won't that create uncertainty for project developers?

Hopefully not. SEPA currently provides a great deal of flexibility to lead agencies regarding the "significance" determination and authorizing mitigation of environmental impacts. In choosing to issue guidance rather than formal rules, Ecology elected to preserve this flexibility for lead agencies when doing greenhouse gas analyses. However, if it later becomes apparent that formal, binding rules are preferable to non-binding guidance, Ecology may reconsider doing rules.

Are the environmental impacts from climate change too speculative to include in a SEPA analysis?

No. There is no basis for excluding greenhouse gas emissions and climate impacts from SEPA review. SEPA requires the consideration of environmental impacts that are likely, not merely speculative. The environmental impacts resulting from greenhouse gas emissions are reasonably foreseeable. Both the Security and Exchange Commission and the National Association of Insurance Commissioners require they be disclosed. The U.S. National Oceanographic and Atmospheric Administration has climate-related information on a national scale while the University of Washington's Climate Impacts Group has information for the Pacific Northwest.

In 2007, the United States Supreme Court ruled that greenhouse gases were pollutants under the federal Clean Air Act and ordered US EPA to determine if they pose a threat to human health and welfare and the environment. If the EPA made such a finding, the agency would be required to regulate greenhouse gases under the Act. In 2009, after carefully evaluating the peer-reviewed science on climate change and global warming the U.S. EPA issued its “Endangerment Finding.” The agency found that current and projected concentrations of 6 specific greenhouse gases threaten public health and welfare of current and future generations.

How does SEPA address the contribution from specific proposals on global greenhouse gas concentration levels?

SEPA requires the consideration of direct, indirect and cumulative impacts of a project. This is true even if the impacts themselves occur outside of local jurisdictional boundaries. (see WAC 197-11-060(4)) Greenhouse gas emissions directly, indirectly, and cumulatively lead to changes in our global climate.

“Cumulative impact” is not defined in state rules, but it is defined under federal rules implementing NEPA, as an “impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” This definition was cited with approval by the Washington Court of Appeals. *See Gebbers v. Okanogan PUD No. 1*, 144 Wn. App. 371 (2008).¹

Greenhouse gas emissions have direct impacts by contributing to the accumulation of greenhouse gases in the atmosphere, which impacts climate. There are also the indirect effects of the accumulation of greenhouse gases in the atmosphere, which include on-the-ground impacts like sea level rise and increased flooding. These indirect impacts are also “cumulative” because it is the addition of greenhouse gases to the existing gases in the atmosphere that cause or exacerbate these effects.

Since any level of greenhouse gas emissions arguably contributes to these impacts, this leads to the first question of how to avoid or reduce those emissions and the more difficult question of what volume of emissions from a specific proposal is considered “significant” under SEPA. Some commenters have suggested that the emissions of greenhouse gases from a single proposal will never qualify as significant in light of the fact that a project’s emissions are a mere fraction of the entire global problem. Federal and state courts have already rejected similar arguments. Based on comments, Ecology is

¹ However, the proper scope of cumulative impacts analysis in Washington is unsettled. Another division of the Court of Appeals did not cite to the federal definition. Instead, under the facts presented to it, it concluded that cumulative impacts analysis only needed to occur “when there is some evidence that the project under review will facilitate future action that will result in additional impacts.” *Boehm v. City of Vancouver*, 111 Wn. App. 711 (2002). This legal issue may remain unsettled until “cumulative impacts” is defined in Washington. For now, it is appropriate to point to the federal definition since Washington courts frequently rely on federal interpretations of NEPA when interpreting SEPA. *See, e.g., Kucera v. Dep’t of Transportation*, 140 Wn. 2d 200 (2000).

currently considering how to provide more guidance on what constitutes “significance” for purposes of SEPA.

Why did Ecology include guidance on evaluating vulnerability to the impacts of climate change?

SEPA requires consideration of impacts on both the natural and the built environment. The built environment may be impacted by rising sea levels, increased storm runoff, or reduced stream flows, which may exacerbate other environmental impacts. For example, it may be appropriate for an agency to consider the vulnerability impacts of constructing a housing development and drilling wells in an area that is expected to see a decline in its drinking water supplies due to climate change.

Can an agency require changes to a proposal in order to reduce emissions or its vulnerability to the impacts of climate change?

Yes. Under current law, SEPA authorizes an agency with jurisdiction to condition or deny a proposal if it is based on their applicable SEPA policies. Most agencies already have such policies in place.

How does SEPA address “beneficial” proposals that may result in a reduction of greenhouse gas emissions?

A proposal might have an overall beneficial impact to the environment, but those “bigger picture” gains can be considered outside of the SEPA process. When making the threshold determination, the lead agency is not allowed to balance whether the beneficial aspects of the proposal outweigh the adverse impacts. However, aspects of a proposal that reduce greenhouse gas emissions could qualify as appropriate mitigation for any emissions that the proposal will create.

What if there is insufficient information to calculate emissions from all sources associated with a proposal throughout the life of the project?

SEPA acknowledges that not all of the important information will be readily available for all proposals. Lead agencies may determine how “vital” this incomplete or unavailable information is and can require an applicant to submit additional information after an initial review of the environmental checklist.

Will Ecology adopt this guidance into rule?

Not at this time. While several stakeholders have asked for rules, we believe that it is appropriate to first provide this non-binding guidance that can be modified and improved upon over time.

What else is the state doing to reduce greenhouse gas emissions? Is the state relying on SEPA to achieve our greenhouse gas statutory limits?

SEPA is an important tool to understand the impacts of our decisions and to mitigate those impacts. However, SEPA cannot be relied on exclusively or even primarily for achieving the statutory reduction requirements. The State is pursuing many actions to reduce greenhouse gases. A full accounting of all the state’s actions between 2005 and now are posted [here](#).

How will Ecology provide training to lead agencies on how to implement this guidance?

Starting in 2011, Ecology will develop a training module to assist lead agencies, applicants and consultants apply the tools and resources for addressing climate change impacts in SEPA documents. We hope to provide this information at regular SEPA workshops and expand its availability via webinars.